

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs July 22, 2008

STATE OF TENNESSEE v. PATRICK GUYEAR SARTAIN

Appeal from the Circuit Court for Grundy County
No. 4271-A Buddy D. Perry, Judge

No. M2007-01913-CCA-R3-CD - Filed February 4, 2009

The defendant, Patrick Guyear Sartain,¹ appeals as of right the revocation of his community corrections sentence by the Grundy County Circuit Court. The trial court revoked the defendant's sentence and ordered him to serve his previously imposed sentences in the custody of the Department of Correction based upon the defendant's admission that he had violated the terms of his community corrections supervision by failing a drug screen and the resulting unsuccessful completion of court-ordered drug treatment. On appeal, both the state and the defendant contend that the case should be remanded for resentencing. Following our review of the record, we affirm and remand for correction of judgments.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Affirmed; Case
Remanded for Correction of Judgments**

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which DAVID H. WELLES and THOMAS T. WOODALL, JJ., joined.

Philip Condra, District Public Defender; and Robert G. Morgan, Assistant District Public Defender, attorneys for appellant, Patrick Guyear Sartain.

Robert E. Cooper, Jr., Attorney General & Reporter; Clarence E. Lutz, Assistant Attorney General; Michael Taylor, District Attorney General; and Steven Strain, Assistant District Attorney General, attorneys for appellee, State of Tennessee.

¹ The revocation warrant lists the defendant's name as Patrick Sartain/Guyear. However, the Affidavit of Indigency reflects the defendant's signature as Patrick Guyear Sartain, as does the Revocation Order and Notice of Appeal. In this instance, we choose to utilize the name as reflected on these documents.

OPINION

The record reflects that the defendant pled guilty in Grundy County Circuit Court on September 13, 2006, to one count of burglary of an automobile and one count of burglary of a business in case number 4271A. The defendant received sentences of two years and three years to be served consecutively to one another and consecutively to previously imposed sentences arising from convictions in Marion County. The judgments further reflect that the defendant was granted release on community corrections. Although the Marion County judgments were not included in the record on appeal, we are able to glean from the record that the convictions in case numbers 7213 and 7473 consisted of one count of statutory rape and one count of aggravated burglary for which the defendant received consecutive sentences of two and three years, also to be served on community corrections. Therefore, the cumulative result of the convictions from both counties was an effective sentence of ten years to be served on community corrections.

On March 28, 2007, a single revocation warrant issued relating to the Grundy County and Marion County cases collectively. The warrant alleged that the defendant violated the terms of his community corrections sentence by failing a drug screen and the resulting expulsion from drug treatment. On May 16, 2007, the trial court entered an agreed order finding that the defendant had violated his community corrections sentence “by failing to comply with drug treatment and being kicked out of treatment for drug use.” Although any transcript of a May 2007 hearing is absent in this record, the discussion of the parties at the July 20, 2007, hearing indicates that the defendant admitted to the violations. At the July 2007 hearing, following some discussion between the court and the parties regarding sentencing alternatives, the trial court ordered the community corrections sentence revoked and the originally imposed sentence executed.

As already alluded to, there are numerous problems and inconsistencies in the record on appeal. The technical record reflects that the trial court entered a revocation order on July 20, 2007. This order indicates that the three year sentence for “burglary-motor vehicle” arising from Grundy County case number 4271A should be served in incarceration. The order inaccurately notes the sentence imposed for this particular offense, to wit: the defendant received a sentence of two years for automobile burglary; the three year sentence was imposed for burglary of a business. Furthermore, the revocation order is also silent regarding the remaining Grundy County conviction for burglary of a business. Therefore, we shall remand this case to Grundy County Circuit Court with the direction to correct the revocation order to accurately reflect what transpired in the trial court, including an accurate rendition of the sentences imposed and their related offenses as the revocation order relates to case number 4271A. However, because it is clear from the transcript what transpired, we shall review the revocation of the five year effective sentence arising from Grundy County case number 4271A.

Additionally, we note that both the May 2007 agreed order and the July 2007 revocation order are silent regarding the Marion County convictions, which serve to comprise five years of the averred ten year sentence of incarceration that the defendant is attempting to challenge on appeal. Our review of this court’s record reveals the absence of a revocation order relating to the Marion

County convictions. An affidavit from defendant's counsel acknowledges that "[n]o order reflecting a revocation as to Marion County Circuit Court cases . . . has been entered." Although the trial court found that the sentences from both counties should be revoked, there is no order reflecting this action relative to the Marion County convictions included within the record and apparently none was entered regarding the Marion County convictions. Without an appropriate final judgment, this court has no jurisdiction to address the propriety of the revocation of the Marion County cases. For this reason, we are limited in our review to the revocation of the Grundy County sentences.

ANALYSIS

The decision to revoke a community corrections sentence rests within the sound discretion of the trial court and will not be disturbed on appeal unless there is no substantial evidence to support the trial court's conclusion that a violation occurred. State v. Harkins, 811 S.W.2d 79, 82-83 (Tenn. 1991). Pursuant to Tennessee Code Annotated section 40-35-311(e), the trial court is required only to find that the violation of a community corrections sentence occurred by a preponderance of the evidence. In reviewing a trial court's findings, this court must examine the record and determine whether the trial court has exercised a conscientious judgment rather than an arbitrary one. State v. Mitchell, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991).

Once there is sufficient evidence to establish a violation of a community corrections sentence, the trial court has the authority to revoke the community corrections sentence and order the original sentence to be served in confinement or the trial court may resentence a defendant to any appropriate sentencing alternative, including incarceration, for any period of time up to the maximum provided for the offense committed with credit for time served while on community corrections. Tenn. Code Ann. § 40-36-106(e)(4). However, when the trial court chooses to resentence a defendant to a more severe sentence, it may only do so after conducting a new sentencing hearing in accordance with the Sentencing Act of 1989. State v. Crook, 2 S.W.3d 238, 240 (Tenn. Crim. App. 1998). The trial court may not arbitrarily increase the length of the sentence and must state on the record the reasons for the new sentence. State v. Ervin, 939 S.W.2d 581, 583 (Tenn. Crim. App. 1996).

The defendant contends that the trial court erred in imposing a sentence of incarceration after revoking his community corrections sentence. The state contends that the case should be remanded because the trial court failed to hold a sentencing hearing upon revocation. Contrary to the state's concession on appeal, the trial court is not required to conduct a sentencing hearing upon every revocation of a community corrections sentence. Instead, a sentencing hearing is required "[b]efore imposing a new sentence." State v. Samuels, 44 S.W.3d 489, 494 (Tenn. 2001). In the present case, the trial court revoked the community corrections sentence and ordered the previously imposed sentence to be served in the Department of Correction. Because a new sentence was not imposed in this case, a resentencing hearing was not required. Furthermore, we conclude that the trial court exercised conscientious and intelligent judgment and did not abuse its discretion in revoking the community corrections sentence and ordering the original sentence to be served in incarceration.

CONCLUSION

Following our review, we affirm the judgment of the trial court revoking the defendant's community corrections sentences and ordering the service of the five year effective sentence in Grundy County case number 4271A. However, because the record is insufficient relative to any judgment or notice of appeal arising from Marion County case numbers 7213 and 7473, we are precluded from reviewing the propriety of the revocation and execution of sentence in those cases. Additionally, the case is remanded to Grundy County for correction of the revocation order as directed in this opinion.

D. KELLY THOMAS, JR., JUDGE